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September 20, 2001

EXECUTIVE SECRETARY

Mr. David Waddell  
Executive Secretary  
Tennessee Regulatory Authority  
360 James Robertson Parkway  
Nashville, TN 37201

Re: *BellSouth Telecommunications, Inc.'s Entry Into Long Distance  
(InterLATA) Service in Tennessee Pursuant to Section 271 of the  
Telecommunications Act of 1996*  
Docket No. 97-00309

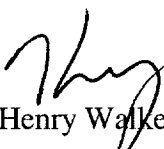
Dear David:

Please accept for filing the original and thirteen copies of the Response of the Intervenor<sup>1</sup> to the Motion to Amend Procedural Schedule filed by BellSouth Telecommunications, Inc. on September 18, 2001, in the above-captioned proceeding. Copies have been forwarded to parties.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By:

  
Henry Walker

HW/nl  
Enclosure

<sup>1</sup> Intervenor include MCI WorldCom, Inc., Southeastern Competitive Carriers Association, XO Tennessee, Inc., Dieca Communications d/b/a Covad Communications, Inc., New South Communications Corporation, AT&T Communications of the South Central States, ITC^DeltaCom, Access Networks, Inc., US LEC of Tennessee, Inc., Broadslate Communications, NuVox Communications, Inc. and Time Warner of the Mid-South LP.

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

Re: *BellSouth Telecommunications, Inc.'s Entry* )  
    *Into Long Distance (InterLATA) Service in* ) Docket No. 97-00309  
    *Tennessee Pursuant to Section 271 of the* )  
    *Telecommunications Act of 1996* )

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**RESPONSE TO MOTION TO AMEND PROCEDURAL SCHEDULE**

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The Intervenor<sup>1</sup>s respectfully suggest that, in light of the Motion filed by BellSouth Telecommunications, Inc. ("BellSouth") to postpone all hearings regarding BellSouth's 271 application for five months, the Tennessee Regulatory Authority should dismiss the application, without prejudice, with the expectation that BellSouth will re-file the application at an appropriate time.

Essentially, BellSouth has now adopted the principal argument raised by the Intervenor<sup>1</sup>s in support of the Motion to Dismiss filed on July 19, 2001; that is, BellSouth proposes to postpone all hearings on the application until after completion of the agency's OSS<sup>2</sup> and Performance Measures dockets<sup>3</sup>. See, BellSouth Motion, at 3. ("[T]his schedule would allow the Authority to complete Phase II of the OSS hearings prior to completion of the Tennessee 271 proceedings.") As the Hearing Officer noted in the Initial Order of August 10, 2001, "No party

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<sup>1</sup> The Intervenor<sup>1</sup>s joining in this response are MCI WorldCom, Inc., Southeastern Competitive Carriers Association, XO Tennessee, Inc., Dieca Communications d/b/a Covad Communications, Inc., New South Communications Corporation, AT&T Communications of the South Central States, ITC^DeltaCom, Access Networks, Inc., US LEC of Tennessee, Inc., Broadslate Communications, NuVox Communications, Inc. and Time Warner of the Mid-South LP.

<sup>2</sup> Docket to Determine Compliance of BellSouth's Operations Support Systems, Docket 01-00362.

contests that both of the aforementioned dockets [OSS and Performance Measures] contain subject matter that BellSouth must rely on in support of its Tennessee application.” BellSouth has now accepted the fact that, until those dockets are finished, it would be premature to conduct hearings on BellSouth’s 271 application.

By delaying the hearing until February, however, BellSouth can no longer represent -- as it is required by the Authority to do-- that the 271 filing “which is presently before the Authority does in fact constitute the complete filing that would be made at the FCC . . . . Moreover, . . . . BellSouth cannot represent to the Authority that [a] supplemental filing will not be required to conform to the Authority’s directions” that BellSouth file in Tennessee the same application and supporting documentation that BellSouth intends to file with the FCC. *See* BellSouth’s “Notice of Voluntary Dismissal Without Prejudice,” at 1-2.<sup>4</sup>

If this matter is heard in mid-February, 2002, as BellSouth now suggests, the information in the application will be seven months old. Time-sensitive data concerning market penetration and commercial usage of BellSouth’s ordering systems will be out-of-date. More significantly, all of BellSouth’s performance data which is based on BellSouth’s regional service quality measurements (“SQMs”) will be irrelevant since, by that time, the Authority will presumably have adopted Tennessee-specific SQMs and will be measuring BellSouth’s performance based on those measurements. BellSouth’s 271 application will have to be amended to incorporate

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*(Footnote cont’d from previous page.)*

<sup>3</sup> Generic Docket on Performance Measurements, Docket 01-00193.

<sup>4</sup> In the August 10 Initial Order, the Hearing Officer noted that the Authority had instructed BellSouth that the company should file in Tennessee “the filing it will rely on before the FCC.” BellSouth itself also acknowledged, when withdrawing its earlier 271 application, that the Authority had “required BellSouth to file with the Authority a copy of its proposed Section 271 application to the FCC as well as all supporting documentation so that the TRA would have available to it the same or substantially the same information as the FCC.” Notice of Voluntary Dismissal and Withdrawal, at 1.

those results. Finally, the application will also have to be amended to reflect the Authority's findings and conclusions in the OSS docket and any changes in BellSouth's OSS resulting from that investigation.

In light of these substantial, anticipated changes in the application, the repeated representations made by counsel for BellSouth on July 12, 2001, that the company's current filing in Tennessee "will constitute the 271 application that BellSouth will file before the FCC, perhaps with a slight variation in format"<sup>5</sup> are no longer accurate.

Less than two months ago, BellSouth argued that it was unnecessary for the Authority to complete either the OSS docket or the Performance Measures docket before the Authority acted on BellSouth's 271 application. *See* Initial Order of August 10, 2001, at 10-11. Based on BellSouth's insistence that its application was "is complete and compliant as filed" (*id.*, at 7), regardless of the evidence developed in the other dockets, and recognizing that the timing of the filing lies within the discretion of BellSouth (*id.*, at 11), the Hearing Officer denied the Motion to Dismiss. Those circumstances have now changed. The application, as filed, is no longer "complete and compliant" in the sense that it will necessarily be substantially amended before it is heard in February or filed with the FCC. Moreover, BellSouth is no longer pressing for an early hearing on the merits of the application.<sup>6</sup> To the contrary, BellSouth itself has now proposed a five-month continuance, a period of delay tantamount to a suspension of the proceedings.

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<sup>5</sup> Initial Order of August 10, 2001, at 5.

<sup>6</sup> In opposing the Motion to Dismiss, BellSouth said it "strongly disagrees" with the proposal that the 271 application should not be heard until the OSS and Performance Measurements dockets are complete. Any such postponement would only "delay the benefits of interLATA competition to Tennessee consumers . . . . The time is now for the TRA to act." BellSouth Reply to Motion to Dismiss, at 1-2.

In sum, BellSouth's Motion is an implicit acknowledgement<sup>6</sup> that contrary to the carrier's earlier representations and the expectations of the Hearing Officer,<sup>7</sup> the carrier is not ready to proceed on the application and will not be so until after the application is substantially amended and, at that time, updated with current information. In light of that acknowledgment, there is no purpose in proceeding further on BellSouth's present filing. Therefore, the Intervenor suggests that the Authority dismiss, without prejudice, BellSouth's 271 application because, as explained above, the application is no longer in compliance with the Authority's directives. The Intervenor presumes that BellSouth will re-file the application only when the carrier can once again represent to the agency that the filing is "complete and compliant" as filed and will constitute the same filing BellSouth intends to make to the FCC.<sup>8</sup>

Respectfully submitted,

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By: 

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<sup>7</sup> "Few, if any circumstances other than those identified here should arise requiring supplemental information." Initial Order of August 10, 2001, at 8.

<sup>8</sup> The Authority should, of course, continue forward with other dockets, including OSS, Performance Measures, Structural Separation, and complaints concerning anti-competitive conduct, which will likely generate evidence and decisions relevant to the issues the TRA will eventually address in a 271 proceeding.

## CERTIFICATE OF SERVICE

I hereby certify that on the 20<sup>th</sup> day of September, 2001, a copy of the foregoing document was served on the parties of record, via hand-delivery, overnight delivery or U.S. Mail, postage prepaid, addressed as follows:

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